

Effective 5/4/2022

40-6-24 Tax credit for mining exploration -- Division to issue certificates.

(1) As used in this section:

(a)

(i) "Certified expenditure" means a cost incurred for an activity in direct support of an exploration activity conducted at a specific site.

(ii) "Certified expenditure" includes:

(A) the cost of obtaining an approval, a permit, a license, or a certificate for an exploration activity;

(B) a direct labor cost and the cost of benefits for employees directly associated with work described in Subsection (1)(a)(i);

(C) the cost of leasing equipment from a third party;

(D) the cost of owning, maintaining, or operating equipment;

(E) insurance and bond premiums associated with the activities described in Subsections (1)(a)(ii)(A) through (D);

(F) the cost of a consultant or an independent contractor; and

(G) any general expense related to operating the business engaged in the exploration activity to the extent the expense is directly attributable to the work described in Subsection (1)(a)(i).

(iii) "Certified expenditure" does not include:

(A) return on investment; or

(B) insurance or bond premiums not described in Subsection (1)(a)(ii)(E).

(b) "Closed mine" means a mine that:

(i) previously operated;

(ii) does not currently operate; and

(iii) for which each mining approval, permit, license, or certificate that allowed the mine to operate is no longer in effect.

(c) "Construction commencement date of a new mine" means the earliest date on which each of the following is true:

(i) the owner or owner's agent obtains for the mine each of the following that a reasonable and prudent person would consider adequate to commence construction of a mine:

(A) each federal, state, or local government approval, permit, license, and certificate; and

(B) each right in land, including each permit, lease, and title;

(ii) each approval, permit, license, and certificate described in Subsection (1)(c)(i)(A) is in effect without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) the construction, including the continuation of construction, is not temporarily or permanently enjoined by an order or other decision of a court or administrative body.

(d) "Eligible claimant" means a person who:

(i) is engaged in the business of mining or extracting minerals;

(ii) is subject to a severance tax under Title 59, Chapter 5, Part 2, Mining Severance Tax; and

(iii) makes a certified expenditure during the taxable year.

(e)

(i) "Exploration activity" means an activity performed in the state for the purpose of determining the existence, location, extent, or quality of a mineral deposit.

(ii) "Exploration activity" includes:

(A) surveying by a geophysical method or by a geochemical method;

(B) drilling one or more exploration holes;

- (C) conducting underground exploration;
 - (D) surface trenching or bulk sampling;
 - (E) taking aerial photographs;
 - (F) geological and geophysical logging;
 - (G) sample analysis; and
 - (H) metallurgical testing.
- (iii) "Exploration activity" does not include an activity that occurs:
- (A) after the construction commencement date of a new mine; or
 - (B) if the mine is or was a closed mine, after the mine reopening date.
- (f) "Geochemical method" means a method of gathering geochemical data, including collecting soil, rock, water, air, vegetation, or any other similar item and performing a chemical analysis on the item.
- (g) "Geophysical method" means a method of gathering geophysical data that is used in mineral exploration, including seismic, gravity, magnetic, radiometric, radar, electromagnetic, and other remote sensing measurements.
- (h) "Mine" means the same as that term is defined in Section 59-5-201.
- (i) "Mine reopening date" means with respect to a closed mine, the earliest date on which each of the following is true:
- (i) the owner or owner's agent obtains for the closed mine each of the following that a reasonable and prudent person would consider adequate to begin operation of a closed mine:
 - (A) each federal, state, or local government approval, permit, license, and certificate; and
 - (B) each right in land, including each permit, lease, and title;
 - (ii) each approval, permit, license, and certificate described in Subsection (1)(i)(i)(A) is in effect without any modification that might jeopardize resuming operation of the closed mine; and
 - (iii) resuming operation of the closed mine is not temporarily or permanently enjoined by an order or other decision of a court or administrative body.
- (j) "Mineral" means a metalliferous mineral as defined in Section 59-5-201.
- (k) "Tax credit certificate" means a certificate issued by the division that:
- (i) lists the eligible claimant's name and taxpayer identification number;
 - (ii) lists the amount of the eligible claimant's tax credit authorized under this section for a taxable year; and
 - (iii) includes other information as determined by the division.
- (2) An eligible claimant that seeks to claim a tax credit under Section 59-5-216 for a taxable year shall apply to the division for a tax credit certificate.
- (3) The eligible claimant shall apply for a tax credit certificate on a form provided by the division and approved by the State Tax Commission.
- (4) The eligible claimant shall include in the application for a tax credit certificate the following information for the taxable year in which the person seeks a tax credit certificate:
- (a) proof that the eligible claimant satisfies the requirements of Subsection (1)(d);
 - (b) a description of the mine where the exploration activity occurred;
 - (c) proof of each certified expenditure, including the amount; and
 - (d) any other information the division requests.
- (5)
- (a) After the division receives an application for a tax credit certificate, for each expenditure in the application, the division shall approve the expenditure as a certified expenditure or deny the expenditure as an expenditure that is not a certified expenditure.

- (b) If the division denies an expenditure, the division shall provide the person a written explanation that states each reason the division denied the expenditure and give the person an opportunity to correct any deficiency or provide additional information.
- (6)
- (a) The tax credit certificate shall state the amount of the tax credit, which is equal to the amount of the eligible claimant's certified expenditures as approved by the division in accordance with Subsection (5).
 - (b) The division may not issue a tax credit certificate for certified expenditures related to exploration activities at a mine if the aggregate value of tax credit certificates issued for certified expenditures related to exploration activities at the same mine exceeds \$20,000,000.
- (7)
- (a) An eligible claimant may assign a tax credit certificate to another person if the eligible claimant provides written notice to the division in a form prescribed by the division, that includes:
 - (i) the eligible claimant's written certification or other proof that the eligible claimant irrevocably elects not to claim the tax credit authorized by the tax credit certificate; and
 - (ii) contact information for the person to whom the eligible claimant is assigning the tax credit certificate.
 - (b) If the eligible claimant meets the requirements of Subsection (7)(a), the division shall issue an assigned tax credit certificate to the person identified by the eligible claimant in an amount equal to the eligible claimant's tax credit certificate.
 - (c) A person to whom an eligible claimant assigns a tax credit certificate may claim the tax credit under Section 59-5-216 as if the person met the requirements of Section 59-5-216, if the person files a return under Title 59, Chapter 5, Part 2, Mining Severance Tax.
- (8) An eligible claimant that receives a tax credit certificate in accordance with this section shall retain the tax credit certificate for the same time period that a person is required to keep books and records under Section 59-1-1406.
- (9) The division shall annually submit to the State Tax Commission an electronic list that includes:
- (a) the name and identifying information for:
 - (i) each eligible claimant to whom the division issues a tax credit certificate; and
 - (ii) each person to whom an eligible claimant assigns a tax credit certificate in accordance with Subsection (7);
 - (b) for each person described in Subsection (9)(a), the amount of the tax credit stated on the tax credit certificate; and
 - (c) for each person described in Subsection (9)(a)(ii), information necessary to identify the tax credit certificate that the eligible claimant assigned to the person.
- (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules governing the administration of the tax credit certificate process described in this section.

Enacted by Chapter 108, 2022 General Session